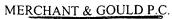
. M&G 40205.2US01



U.S. PROVISIONAL APPLICATION NUMBER

COPY OF PAPERS ORIGINALLY FILED





DATE OF FILING (Day, Month, Year)

United States Patent Application

DECLARATION UNDER 37 C.F.R. § 1.63

| As a below named inventoname; that | or I hereby declare that: my res | sidence, post office addre | ess and citize | enship are as stated below next to |) my |
|--|---|--|--|---|-----------------|
| I verily believe I am the or are named below) of the subject ma METHOD FOR ADAPTIVELY SI | atter which is claimed and for v | which a patent is sought | on the inven | | rs |
| The specification of which a is attached hereto b was filed on October 19, 200 filed application) described and cla which I solicit a United States pater | imed in international no. fi | 032,895, and was amended of | • | f applicable) (in the case of a PCT y), which I have reviewed and fo | |
| I hereby state that I have reviewed any amendment referred to above. | and understand the contents of | the above-identified spe | cification, ir | ncluding the claims, as amended l | by |
| I hereby claim foreign priority bene certificate listed below and have als that of the application on the basis | so identified below any foreign | | | | |
| a. ∑ no such applications have beb. ☐ such applications have been | | | | | |
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| FORE | EIGN APPLICATION(S), IF ANY, (| CLAIMING PRIORITY UN | DER 35 USC § | 119 | = = i |
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| COUNTRY ALL FORE | APPLICATION NUMBER IGN APPLICATION(S), IF ANY, F APPLICATION NUMBER tle 35, United States Code, § 12 atter of each of the claims of the raph of Title 35, United States (1) 1 Regulations, § 1.56(a) which | DATE OF FILING (day, month, year) ILED BEFORE THE PRIOR (day, month, year) 20/365 of any United Stanis application is not discorde, § 112, I acknowled | tes and PCT closed in the dge the duty | DATE OF ISSUE (day, month, year) CATION(S) DATE OF ISSUE (day, month, year) international application(s) liste prior United States application it to disclose material information | n the as |
| ALL FORE COUNTRY I hereby claim the benefit under Tit below and, insofar as the subject m manner provided by the first paragi defined in Title 37, Code of Federa | APPLICATION NUMBER IGN APPLICATION(S), IF ANY, F APPLICATION NUMBER tle 35, United States Code, § 12 atter of each of the claims of the raph of Title 35, United States (1) 1 Regulations, § 1.56(a) which this application. | DATE OF FILING (day, month, year) ILED BEFORE THE PRIOR (day, month, year) 20/365 of any United Stanis application is not disconcered between the file | tes and PCT losed in the dge the duty ing date of t | DATE OF ISSUE (day, month, year) CATION(S) DATE OF ISSUE (day, month, year) international application(s) liste prior United States application it to disclose material information | n the as |

• I acknowledge the duty to disclose information which is material to the patentability of this application in accordance with Title 37, Code of Federal Regulations, § 1.56 (reprinted below).

- § 1.56 Duty to disclose information material to patentability.

- (a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is canceled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is canceled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b) (d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:
 - (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
- (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.
- (b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and
- (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim;
 - (2) It refutes, or is inconsistent with, a position the applicant takes in:
 - (i) Opposing an argument of unpatentability relied on by the Office, or
 - (ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden of proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

- (c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:
- (1) Each inventor named in the application:
- (2) Each attorney or agent who prepares or prosecutes the application; and
- (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.
- (d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.
- (e) In any continuation in part application, the duty under this section includes the duty to disclose to the Office all information known to the person to be material to patentability, as defined in paragraph (b) of this section, which became available between the filing date of the prior application and the national or PCT international filing date of the continuation in part application.

Please direct all correspondence in this case to Merchant & Gould P.C. at the address indicated below:

23552
PATENT TRADEMARK OFFICE

Merchant & Gould P.C. P.O. Box 2903 Minneapolis, MN 55402-0903





I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

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